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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ETHAN ROGERS, as an individual and on
behalf of all similarly situated employees,

Plaintiff,

v.

TRITON AIR, INC., and DOES 1-50,
inclusive,

Defendants.

Case No. 30-2022-01284893-CU-OE-CXC
(Consolidated with No. 30-2022-01295857-
CU-OE-CXC)

CLASS ACTION

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE**

Assigned to for all purposes:
Hon. Peter Wilson, Dept. CX-101

Complaint Filed: October 6, 2022
Trial Date: None Yet Set

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE**

2 IT IS HEREBY STIPULATED, by and among Plaintiff ETHAN ROGERS, on behalf of
3 himself and the Settlement Class Members, on the one hand, and Defendant TRITON AIR, INC.,
4 on the other hand, and subject to the approval of the Court, that the above-captioned action is
5 hereby being compromised and settled pursuant to the terms and conditions set forth in this Joint
6 Stipulation of Class Action Settlement and Release (the “Settlement”).

7 **1. DEFINITIONS**

8 Capitalized terms used in this Settlement shall have the meanings set forth below:

9 1.1. “Action” means the consolidated putative class and PAGA action entitled *Rogers*
10 *v. Triton Air, Inc.*, pending in the Superior Court of the State of California, County of Orange,
11 and designated as Consolidated Case No. 30-2022-01284893-CU-OE-CXC.

12 1.2. “Class Member” means all non-exempt, hourly paid employees currently and
13 formerly employed by Defendant in the state of California from October 6, 2018 through
14 November 30, 2022.

15 1.3. “PAGA Member” means all non-exempt, hourly paid employees currently and
16 formerly employed by Defendant in the state of California from October 3, 2021 through
17 November 30, 2022.

18 1.4. “Settlement Administrator” means Phoenix Settlement Administrators.

19 1.5. “Settlement Administration Costs” means the amount to be paid to the third-party
20 Settlement Administrator from the Gross Settlement Amount for the administration of the
21 Settlement. The Settlement Administration Costs amount is not to exceed Six Thousand Dollars
22 (\$6,000.00). Any portion of the requested Settlement Administration Costs that is not awarded to
23 the Settlement Administrator shall be part of the Net Settlement Amount.

24 1.6. “Class Counsel” means Kevin Mahoney and John A. Young of the Mahoney Law
25 Group, APC.

26 1.7. “Class Counsel Fees” means reasonable attorneys’ fees for Class Counsel’s
27 litigation and resolution of this Action, in the amount of Eighty-Six Thousand Six Hundred and
28 Sixty-Six Dollars And Sixty Six Cents (\$86,666.66) (or 33.33% of the Gross Settlement Amount).

1 The Court shall determine the amount of the Class Counsel Fees, and it shall be paid from the
2 Gross Settlement Amount. Any portion of the requested Class Counsel Fees that is not awarded
3 to Class Counsel shall be part of the Net Settlement Amount.

4 1.8. "Class Counsel Costs" means actual expenses incurred by Class Counsel for Class
5 Counsel's litigation and resolution of this Action, as supported by declaration, in an amount not
6 to exceed Fourteen Thousand Dollars (\$14,000.00). The Court shall determine the amount of the
7 Class Counsel Costs, and it shall be paid from the Gross Settlement Amount. Any portion of the
8 requested Class Counsel Costs that is not awarded to Class Counsel shall be part of the Net
9 Settlement Amount.

10 1.9. "Class Information" means information regarding Settlement Class Members that
11 Defendant will in good faith compile from its records and provide to the Settlement
12 Administrator. Class Information shall be provided as a Microsoft Excel spreadsheet and shall
13 include: each Settlement Class Member's full name; last known address; last known home
14 telephone number; social security number; all start and end dates of employment during the Class
15 Period, and the total number of weeks each Settlement Class Member worked for Defendant
16 during the Class Period. The number of weeks worked shall be calculated using Defendant's
17 payroll data during the Class Period whenever the hours worked for the work week was greater
18 than zero. Because social security numbers are included in the Class Information, the Settlement
19 Administrator shall maintain the Class Information in confidence; access shall be limited to those
20 with a need to use the Class Information as part of the administration of the Settlement, and
21 transmission shall be through use of a secure, password-protected file.

22 1.10. "Class Period" means the period from October 6, 2018 through November 30,
23 2022.

24 1.11. "PAGA Class Period" means the period from October 3, 2021 through November
25 30, 2022.

26 1.12. "PAGA Released Claims" shall mean all claims, demands, rights, liabilities and
27 causes of action for penalties under California Labor Code Private Attorneys General Act of 2004
28 against the Released Parties, based on the letter to the Labor & Workforce Development Agency

1 on June 8, 2021, that arose during the PAGA Class Period, including but not limited to claims for
2 civil penalties for violations of Labor Code 226, 226.7, 510, 512, 1182.12, 1194, 1197, 2802,
3 2698-2699.5, and claims under California Business & Professions Code section 17200, and
4 applicable Wage Orders of the Industrial Welfare Commission, and all related claims for
5 attorneys' fees and costs.

6 1.13. "Class Representative Service Award" means the amount that the Court authorizes
7 to be paid to Plaintiff, not to exceed Five Thousand Dollars (\$5,000.00), in addition to Plaintiff's
8 Individual Settlement Payment. The Class Representative Service Award to Plaintiff is in
9 exchange for the Released Claims, Plaintiff's General Released Claims, and for Plaintiff's efforts
10 and risks in assisting with the prosecution of the Action. The Class Representative Service Award
11 shall be paid from the Gross Settlement Amount. Any portion of the requested Class
12 Representative Service Award that are not awarded to Plaintiff shall be part of the Net Settlement
13 Amount.

14 1.14. "Court" means the Superior Court of the State of California for the County of
15 Orange.

16 1.15. "Defendant" mean Triton Air, Inc., and each of its parent companies, subsidiaries,
17 related companies, affiliates, dbas, current and former management companies, shareholders,
18 members, agents (including any investment bankers, accountants, insurers, reinsurers, attorneys and
19 any past, present or future officers, directors and employees) predecessors, successors, and assigns
20 or any related entity that was the "employer" of Class Members.

21 1.16. "Defendant's Counsel" means Robert G. Loewy of Law Office of Robert G.
22 Loewy, P.C. and Mark J. Butler of Mark Butler & Associates.

23 1.17. "Effective Date" means the date that the Gross Settlement Amount is fully funded.

24 1.18. "Employee Taxes" means the employee's share of any and all applicable federal,
25 state, and local payroll taxes on the portion of Settlement Class Members' Individual Settlement
26 Payment that constitutes wages. The Employee Taxes shall be paid out of the Net Settlement
27 Amount.

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1 1.19. "Employer Taxes" means the employer's share of any and all applicable federal,
2 state, and local payroll taxes on the portion of Settlement Class Members' Individual Settlement
3 Payment that constitutes wages. The Employer Taxes shall be paid by Defendant separately and
4 not out of the Gross Settlement Amount or Net Settlement Amount.

5 1.20. "Final Approval Hearing" means the hearing held on the motion for final approval
6 of the Settlement.

7 1.21. "Final Approval Date" means the date which the Court grants final approval of the
8 Settlement.

9 1.22. "Final Judgment" means the Court's entry of an order of judgment in this Action
10 following the Court's final approval of the Settlement.

11 1.23. "Gross Settlement Amount" means the maximum amount Defendant shall have to
12 pay in connection with this Settlement, by way of a common fund, which shall be inclusive of all
13 Individual Settlement Amounts to Settlement Class Members, Class Counsel Fees, Class Counsel
14 Costs, Settlement Administrator Costs, Class Representative Service Award, and PAGA
15 Allocation. Subject to Court approval and the terms of this Settlement, the Gross Settlement
16 Amount Defendant shall be required to pay is Two Hundred Sixty Thousand Dollars and Zero
17 Cents (\$260,000.00). No portion of the Gross Settlement Amount will revert to Defendant, and
18 the Settlement does not require Settlement Class Members to submit claims as a prerequisite to
19 receiving their Individual Settlement Payment. This settlement sum is based on Defendant's
20 representation that the number of total Workweeks during the Class Period through November
21 30, 2022 was Nine Thousand Four Hundred Fifty (9,450). Defendant shall not be required to pay
22 more than the Gross Settlement Amount as long as the actual number of Workweeks during the
23 Class Period is no more than ten percent (10%) greater than Defendant's estimate. If the actual
24 number of Workweeks during the Class Period is more than ten percent (10%) greater than the
25 estimate – or 10,395 or more Workweeks – the Gross Settlement Amount shall increase
26 proportionately to the increase in the number of Workweeks over the ten percent (10%) grace
27 amount— e.g., if the number of Workweeks increases by eleven percent (11%), the Gross
28 Settlement Amount shall increase by one percent (1%); if the number of Workweeks increases by

twelve percent (12%), the Gross Settlement Amount shall increase by two percent (2%), and so forth. Under no other circumstances shall Defendant be required to pay more than the Gross Settlement Amount except as provided for in this section of the Settlement Agreement.

1.24. "Individual Settlement Payment" means the amount payable to each Settlement Class Member, as calculated pursuant to Paragraph 3.12.1 of the Settlement, from the Net Settlement Amount. Checks for Individual Settlement Payments shall specifically indicate that they are void if not negotiated within one hundred eighty (180) days of their issuance.

1.25. "PAGA Allocation" means Twenty Thousand Dollars (\$20,000.00), allocated from the Gross Settlement Amount for the compromise of claims brought under the Labor Code Private Attorney General Act of 2004 ("PAGA"). Per California Labor Code section 2699(i), Fifteen Thousand Dollars (\$15,000.00), representing 75% of the PAGA Allocation, shall be paid to California's Labor Workforce Development Agency. The remaining Five Thousand Dollars (\$5,000.00), representing 25% of the PAGA Allocation, shall be part of the Net Settlement Amount and shall be distributed to PAGA Members.

1.26. "LWDA" shall mean the California Labor and Workforce Development Agency.

1.27. "LWDA PAGA Allocation" means Fifteen Thousand Dollars (\$15,000.00), representing 75% of the PAGA Allocation, and is the amount payable from the Gross Settlement Amount to California's Labor Workforce Development Agency.

1.28. "PAGA Member Allocation" means Five Thousand Dollars (\$5,000.00), representing the PAGA Allocation, and is the amount payable to PAGA Members. The PAGA Member Allocation shall be distributed in its entirety to PAGA Class Members pursuant to paragraph 3.13.

1.29. "Net Settlement Amount" means the Gross Settlement Amount, less the Class Counsel Fees, the Class Counsel Costs, the Class Representative Service Award, the Settlement Administration Costs, the LWDA PAGA Allocation, and the PAGA Class Member Allocation. The Net Settlement Amount shall be distributed in its entirety to Settlement Class Members, as provided for in this Settlement.

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1 1.30. "Notice of Objection" means a written statement of objection (or completed
2 Objection to Settlement form attached hereto as **Exhibit D**) to the Settlement, made and signed
3 by a Settlement Class Member and includes the following: (1) the full name of the Settlement
4 Class Member; (2) the dates of employment of the Settlement Class Member; (3) the last four
5 digits of the Settlement Class Member's Social Security number and/or the entire Employee ID
6 number; (4) the basis for the objection; and, (5) whether the Settlement Class Member intends to
7 appear at the Final Approval Hearing.

8 1.31. "Notice of Settlement" means the Notice of Proposed Class Action and Notice of
9 Private Attorney General Act Settlement (attached hereto as **Exhibit A**).

10 1.32. "Notice Packet" means the Notice of Proposed Class Action, Class Workweek
11 Dispute Form, the Request To Be Excluded From Settlement form, and Objection to Settlement
12 form to be provided in English and Spanish.

13 1.33. "Settlement Class Members" means all Class Members who do not submit a valid
14 and timely Request for Exclusion. "Parties" means Plaintiff and Defendant collectively; and
15 "Party" shall mean any Defendant or Plaintiff, individually.

16 1.34. "Plaintiff" means Ethan Rogers.

17 1.35. "Plaintiff's General Released Claims" means, in addition to the Released Claims,
18 Plaintiff, on behalf of himself, his respective, agents, spouses, executors, representatives, heirs,
19 successors, assigns, and estates, in exchange for the terms and conditions of this Settlement,
20 including the Class Representative Service Award requested or as otherwise authorized by the
21 Court, shall also, as of the Effective Date, fully and forever release the Released Parties, to the
22 full extent permitted by law, of and from any and all claims arising from their employment with
23 Defendant, known and unknown, asserted and unasserted, which Plaintiff had or may have had
24 against the Released Parties, whether sounding in tort, in contract, in law, in equity or otherwise,
25 and including but not limited to all claims for violation of any local, state, or federal statute, rule,
26 or regulation. Plaintiff expressly waive and relinquish all rights and benefits afforded by section
27 1542 of the Civil Code of the State of California and do so understanding and acknowledging the
28 significance of such specific waiver of section 1542. Section 1542 of the Civil Code of the State

1 of California states as follows:

2 **A general release does not extend to claims that the creditor or releasing party does**
3 **not know or suspect to exist in his or her favor at the time of executing the release**
4 **and that, if known by him or her, would have materially affected his or her**
5 **settlement with the debtor or released party.**

6 Notwithstanding the above, Plaintiff's General Released Claims do not include any
7 workers' compensation claims, claims that cannot be waived as a matter of law by signing this
8 agreement, or enforce this agreement. No release in this Agreement is effective until the Gross
9 Settlement Amount is fully funded.

10 1.36. "Preliminary Approval Date" means the date the Court enters the Preliminary
11 Approval Order for the Settlement.

12 1.37. "Preliminary Approval Order" means the proposed order (filed concurrently with
13 this Settlement and Plaintiff's motion for preliminary approval of the Settlement), as may be
14 amended by the Court, for preliminary approval of the Settlement.

15 1.38. "Released Claims" means any and all claims during the Class Period which were
16 or could have been raised based on the facts, conduct, and/or omissions alleged in the Action,
17 including all wage and hour claims, demands, rights, liabilities, and causes of action for unpaid
18 wages, including minimum wage payments, regular wages, overtime wages; failure to pay wages
19 during employment; failure to pay all wages due upon separation of employment; failure to
20 maintain and provide accurate records; meal and rest break violations; meal and rest break
21 premiums; wage statement violations, failure to reimburse for necessary business expenditures,
22 violation of the Private Attorney General Act (California Labor Code section 2698, et seq.), civil
23 and statutory penalties, interest, liquidated damages, attorney's fees and costs, claims under
24 California Labor Code sections 201-204, 225.5, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197,
25 1198, 2802, 2698-2699.5, and applicable Industrial Welfare Commission Wage Order, and claims
26 under California Business & Professions Code sections 17200-17204. It is understood and agreed
27 that Released Claims do not include claims for workers' compensation, unemployment, or
28 disability benefits of any nature, nor any claims, actions, or causes of action which may be

1 possessed by Settlement Class Members under state or federal discrimination statutes, including,
2 without limitation, the California Fair Employment and Housing Act, California Government
3 Code section 12940, *et seq.*; the Unruh Civil Rights Act, California Civil Code section 51, *et seq.*;
4 the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, *et seq.*;
5 the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*; the Employee
6 Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.*; and all of their
7 implementing regulations and interpretive guidelines. No release in this Agreement shall become
8 effective until the Gross Settlement Amount is fully funded.

9 1.39. “Released Parties” means Triton Air, Inc., and each of its parent companies,
10 subsidiaries, related companies, affiliates, dbas, current and former management companies,
11 shareholders, members, agents (including any investment bankers, accountants, insurers, reinsurers,
12 attorneys and any past, present or future officers, directors and employees) predecessors, successors,
13 and assigns, or any related entity that was the “employer” of Class Members.

14 1.40. “Released Parties’ Release of Claims Against Representative Plaintiff” means
15 Released Parties, as defined herein, do hereby, for themselves, and for their heirs, successors,
16 predecessors, attorneys, agents, representatives and assigns, forever release the Representative
17 Plaintiff from any and all charges, complaints, claims, liabilities, obligations, promises,
18 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
19 losses, debts, and expenses (including attorneys’ fees and costs actually incurred) of any nature
20 whatsoever, from the beginning of time through the date of their signature on this Settlement
21 Agreement, known or unknown, suspected or unsuspected, including but not limited to all claims
22 arising out of, based upon, or relating to Representative Plaintiff’s employment with Defendant
23 and related to this Lawsuit.

24 1.41. Released Parties expressly waive and relinquish all rights and benefits afforded by
25 section 1542 of the Civil Code of the State of California and do so understanding and
26 acknowledging the significance of such specific waiver of section 1542. Section 1542 of the Civil
27 Code of the State of California states as follows:
28

1 **A general release does not extend to claims that the creditor or releasing party**
2 **does not know or suspect to exist in his or her favor at the time of executing**
3 **the release and that, if known by him or her, would have materially affected**
4 **his or her settlement with the debtor or released party.**

5 1.42. Thus, subject to and in accordance with this Settlement Agreement, even if
6 Released Parties may hereafter discover facts in addition to or different from those they now know
7 or believe to be true, Released Parties shall be deemed to have fully, finally, and forever settled
8 and released any and all claims against the Representative Plaintiff that could have been alleged
9 against them, as well as any other claims, whether known or unknown, suspected or unsuspected,
10 contingent or non-contingent, that now exist, upon any theory of law or equity, including without
11 limitation, conduct which is negligent, intentional, with or without malice, or a breach of any
12 duty, law, or rule, without regard to the subsequent discovery or existence of such different or
13 additional facts.

14 1.43. "Response Deadline" means the date sixty (60) days after the Settlement
15 Administrator mails the Notice Packets to Settlement Class Members, and shall be the last date
16 on which Settlement Class Members may: (a) postmark Requests for Exclusion from the
17 Settlement, or (b) postmark Objections to the Settlement.

18 1.44. "Settlement" means this Joint Stipulation of Class Action Settlement and Release.

19 1.45. "Settlement Class Member(s)" or "Settlement Class" means all non-exempt
20 employees, currently and formerly employed by Defendant in the State of California at any time
21 during the Class Period.

22 1.46. "Workweeks" shall mean the number of weeks each Class Member worked at
23 Triton Air, Inc. as an hourly-paid and/or non-exempt employee in California during the Class
24 Period. The Settlement Administrator will calculate the number of Workweeks by calculating the
25 number of days each Class Member worked at Triton Air, Inc. was employed during the Class
26 Period, and dividing by seven (7).

27 2. **RECITALS**

28 2.1. Class Certification. The Parties stipulate and agree to the conditional certification
 of this Action for purposes of this Settlement only. Should, for whatever reason, the Settlement
 not become final and effective, conditional Class Certification shall immediately be set aside

(subject to further proceedings on motion of any Party to certify or decertify thereafter). The Parties' willingness to stipulate to conditional Class Certification as part of the Settlement shall have no bearing on and shall not be admissible or considered in connection with the issue of whether a class should be certified in a non-settlement context in this Action, and shall have no bearing on and shall not be admissible or considered in connection with the issue of whether a class should be certified in any other lawsuit. Defendant expressly reserves its right to oppose class certification should this Settlement be modified or reversed on appeal or otherwise not become final and effective for any reason.

2.2. Procedural History. On October 3, 2022, Plaintiff submitted his PAGA letter to the LWDA alleging Defendant violated, among other provisions of the California Labor Code and applicable wage law, Labor Code sections 201, 202, 203, 204, 206, 210, 226, 226.3, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 2802, and 2698-2699.5, California Business & Professions Code section 17200, and applicable Wage Orders of the Industrial Welfare Commission. On October 6, 2022, Plaintiff filed a lawsuit in the Superior Court of California for the County of Orange as a proposed class action on behalf of all current and former non-exempt California employees of Defendant during the period of October 6, 2018 through the date of final judgment. In his initial complaint Plaintiff alleged that Defendant (1) failed to pay wages, including minimum wage and overtime; (2) failed to provide rest periods; (3) failed to provide meal periods; (4) failed to pay wages due at separation of employment; (5) failed to provide accurate itemized wage statements; (6) failure to reimburse for necessary business expenditures; and (7) violations of Business and Professions Code Section 17200 et seq. Plaintiff sought recovery under the California Labor Code, the applicable Industrial Welfare Commission Wage Order, and the California Business & Professions Code. On December 8, 2022, Plaintiff filed a separate action alleging Labor Code violations under the Labor Code Private Attorneys General Act of 2004 ("PAGA") for Defendant's (1) failure to pay wages, including minimum wage and overtime; (2) failure to provide rest periods; (3) failure to provide meal periods; (4) failure to pay wages due at separation of employment; (5) failure to provide accurate itemized wage statements; and (6) failure to reimburse for necessary business expenditures. On June 14,

2023, Plaintiff filed a consolidated complaint alleged that Defendant (1) failed to pay wages, including minimum wage and overtime; (2) failed to provide rest periods; (3) failed to provide meal periods; (4) failed to pay wages due at separation of employment; (5) failed to provide accurate itemized wage statements; (6) failure to reimburse for necessary business expenditures; (7) violations of Business and Professions Code Section 17200 et seq.; and (8) violations under the PAGA.

2.3. Settlement Negotiations. On May 31, 2023, the Parties participated in a full-day private mediation session with mediator Jill Sperber, Esq. Prior to the mediation, Defendant provided Plaintiff's personnel file, Plaintiff's time and pay records, Defendant's employee handbooks utilized during the Class Period, time records and corresponding time records for a sample of putative class members, as well as other documents, allowing Class Counsel to construct a damage analysis. Based on the information obtained through informal discovery, the Parties reached an agreement in principle to the basic terms of a class-action settlement agreement. The Settlement is the result of an informed and detailed evaluation of the total exposure and potential liability, in relation to the costs and risks associated with continued litigation of the Action. The Parties have engaged in sufficient discovery and investigation to assess the relative merits of the claims, defenses, and contentions of the Parties.

2.4. Benefits of Settlement to Settlement Class Members. Plaintiff and Class Counsel recognize the length of continued proceedings necessary to litigate the Parties' disputes through certification, trial, and any possible appeal. Plaintiff and Class Counsel have also taken into account the uncertainty and risk of the outcome of further litigation, the difficulties and delays inherent in such litigation, including, but not limited to, the risks related to a contested motion for class certification, potential motions for decertification, trial, and appeal. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action and the difficulties in establishing damages for the Class Members. Plaintiff and Class Counsel have also taken into account Defendant's agreement to enter into a settlement that confers substantial relief upon Class Members. Based on the foregoing, Plaintiff and Class Counsel have determined that this Settlement is fair, adequate, and reasonable, and is

1 in the best interests of the Class Members.

2 2.5. Defendant's Denial of Wrongdoing and Liability and Reasons for Settlement.

3 Defendant has denied and continue to deny each and all of the claims and contentions alleged in
4 the Action. Defendant has repeatedly asserted, and continue to assert, defenses thereto, and have
5 expressly denied, and continue to deny, any wrongdoing or legal liability arising out of any of the
6 facts, conduct, and/or omissions alleged in the Action. Defendant has also denied, and continue
7 to deny, *inter alia*, the allegations that the Class Members have suffered damage. Without limiting
8 the foregoing, Defendant contends that the Class Members were properly and timely paid all
9 wages owed, including, but not limited to, all straight and overtime pay; were provided timely
10 and uninterrupted meal and rest periods as required under California law; were properly and
11 timely paid all wages upon separation of employment or otherwise when due; were properly and
12 timely provided accurate itemized wage statements as required under California law; were
13 properly reimbursed for any expenses required to incur; and that Defendant has not engaged in
14 any unlawful, unfair, or fraudulent business practices in violation of California law. However,
15 Defendant has concluded that any further defense of this litigation would be protracted and
16 expensive for all Parties. Substantial amounts of time, energy, and resources of Defendant has
17 been and, unless this Settlement is approved, will continue to be devoted to the defense of the
18 claims asserted by Plaintiff and Class Members. Defendant has also taken into account the
19 uncertainty and risks inherent in any litigation, especially in complex cases such as this Action.
20 Based on the foregoing, Defendant has concluded that it is desirable and beneficial that the Action
21 be fully and finally settled in the manner and upon the terms and conditions set forth in this
22 Settlement. This will allow Defendant to dispose of burdensome and protracted litigation, permit
23 the operation of Defendant's business without further expensive litigation, and put an end to the
24 distraction and diversion of its personnel regarding matters at issue in the Action.

25 2.6. No Admissions. The Parties understand and agree that this Settlement is the result
26 of a good faith compromise of disputed claims and allegations, and Defendant is entering into this
27 Settlement solely to resolve disputed matters. No part of this Settlement or any conduct or written
28 or oral statements made in connection with this Settlement, whether or not the Settlement is finally

1 approved and/or consummated, is or may be offered as or construed to be an admission or
2 concession of any kind by any of the Parties. In particular, but without limiting the generality of
3 the foregoing, nothing about this Settlement shall be offered or construed as an admission that
4 Defendant violated any of its obligations under the California Labor Code, applicable Industrial
5 Welfare Commission Wage Orders, Business and Professions Code or Private Attorney General
6 Act, or of liability in general, or any wrongdoing, impropriety, responsibility, or fault whatsoever
7 on the part of Defendant and/or the Released Parties. In addition, this Settlement shall not be
8 offered or be admissible in evidence against any of the Parties or any of the Released Parties,
9 except in any action or proceeding brought by or against Plaintiff, Class Members, or Defendant
10 to enforce the Settlement's terms, or by Defendant in defense of any claims brought by Plaintiff
11 or Class Members. The provisions of this paragraph shall become effective when this Settlement
12 is signed by all Parties, and shall be binding on the Parties and their counsel regardless of whether
13 the Settlement is preliminarily and/or finally approved or terminated for any reason, or rendered
14 null and void.

15 2.7. Class Members' Claims. Plaintiff claims that the Released Claims have merit and
16 give rise to liability on the part of Defendant. This Settlement is a compromise of disputed claims.
17 Nothing contained in this Settlement, and no documents referred to herein, nor any action taken
18 to carry out this Settlement, may be construed or used as an admission by or against the Plaintiff,
19 Class Members or Class Counsel as to the merits or lack thereof of the claims asserted in the
20 Action.

21 2.8. Defendant's Defenses. Defendant has denied and continue to deny each and all of
22 the allegations, claims, and contentions of wrongdoing alleged by Plaintiff in the Action.
23 Defendant has expressly denied and continue to deny all charges of wrongdoing or liability
24 against them arising out of any of the conduct, statements, acts, or omissions alleged in the Action.
25 Defendant contends that they complied in good faith with California and federal wage-and-hour
26 laws and have dealt legally and fairly with Plaintiff and Class Members. Defendant further denies
27 that, for any purpose other than settling this Action, these claims are appropriate for class or
28 representative treatment.

1 **3. TERMS OF SETTLEMENT**

2 The Parties agree as follows:

3 3.1. Binding Settlement. This Settlement shall bind the Parties and all Settlement Class
4 Members, subject to the terms and conditions set forth in the Settlement and the Court's approval.

5 3.2. Release As To All Settlement Class Members and Plaintiff.

6 3.2.1. Release As To All Settlement Class Members. As of the Effective Date, all
7 Settlement Class Members, including Plaintiff, will be deemed to have fully, finally and forever
8 released, settled, compromised, relinquished, and discharged the Released Parties from the
9 Released Claims during the Class Period. This release shall be binding on all Settlement Class
10 Members, including each of their respective attorneys, agents, executors, representatives,
11 guardians ad litem, heirs, successors, and assigns, and shall inure to the benefit of the Released
12 Parties, who shall have no further or other liability or obligation to any Class Member with respect
13 to the Released Claims, except as expressly provided herein. All PAGA Members, regardless of
14 whether they submit timely and valid Requests for Exclusion from the Settlement, will release all
15 PAGA Released Claims, as well as claims that could have been premised on the claims, causes
16 of action or legal theories alleged in the Action, during the PAGA Class Period. Plaintiff on behalf
17 of the State of California and the LWDA will also release all PAGA Released Claims.

18 3.2.2. Release As To Plaintiff. As of the Effective Date, Plaintiff will be deemed
19 to have fully, finally and forever released, settled, compromised, relinquished, and discharged
20 any and all of Plaintiff's General Released Claims against the Released Parties. With respect to
21 the Plaintiff's General Released Claims only, Plaintiff shall be deemed to have, and by operation
22 of the Final Judgment shall have, in light of their respective Class Representative Service Awards,
23 expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights,
24 and benefits of section 1542 of the California Civil Code, which section provides:

25 A general release does not extend to claims which the creditor or releasing
26 party does not know or suspect to exist in his or her favor at the time of
27 executing the release and that, if known by him or her, would have
28 materially affected his or her settlement with the debtor or released party.

1 Plaintiff may hereafter discover facts in addition to or different from those they now know
2 or believe to be true with respect to the subject matter of the Plaintiff's General Released Claims,
3 but upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment
4 shall have, fully, finally, and forever settled and released any and all of the Plaintiff's General
5 Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-
6 contingent, which now exist, or heretofore have existed, upon any theory of law or equity now
7 existing or coming into existence in the future. Plaintiff agree not to sue or otherwise make a
8 claim against any of the Released Parties for Plaintiff's General Released Claims.

9 3.3. Tax Liability. The Parties understand and agree that the Parties are not providing
10 tax or legal advice. Defendant shall be responsible for any Employer Taxes due as a result of the
11 Settlement. These payments shall be separate and shall not be made from the Gross Settlement
12 Amount or the Net Settlement Amount. Settlement Class Members shall remain responsible for
13 any Employee Taxes due as a result of the Settlement. Settlement Class Members will assume
14 any employee tax obligations or consequences that may arise from this Settlement and should
15 consult with a tax expert if they have questions. However, Individual Settlement Payments will
16 be allocated as follows: one-half as wages (for which an IRS Form W-2 will be issued) and one-
17 half as interest and penalties (for which an IRS Form 1099 will be issued). Any required payroll
18 deductions will be based on this apportionment. The Parties agree that, in the event that any taxing
19 body determines that additional employee taxes are due from any Settlement Class Member, such
20 Settlement Class Member assumes all responsibility for the payment of such taxes.

21 3.4. Circular 230 Disclaimer. The Parties acknowledge and agree that (1) no provision
22 of this Settlement, and no written communication or disclosure between or among the Parties,
23 Class Counsel or Defendant's Counsel and other advisers, is or was intended to be, nor shall any
24 such communication or disclosure constitute or be construed, or be relied upon, as tax advice
25 within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
26 amended); (2) the acknowledging Party (a) has relied exclusively upon his, her, or its own,
27 independent legal and tax counsel for advice (including tax advice) in connection with this
28 Settlement, (b) has not entered into this Settlement based upon the recommendation of any other

1 Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any
2 communication or disclosure by any attorney or advisor to any other Party to avoid any tax penalty
3 that may be imposed on the acknowledging Party; and (3) no attorney or advisor to any other
4 Party has imposed any limitation that protects the confidentiality of any such attorney's or
5 adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure
6 by the acknowledging Party of the tax treatment or tax structure of any transaction, including any
7 transaction contemplated by this Settlement.

8 3.5. Settlement Approval and Implementation Procedures. As part of this Settlement,
9 the Parties agree to the following procedures for obtaining the Court's preliminary approval of
10 the Settlement: conditionally certifying the Settlement Class, notifying Settlement Class Members
11 of the Settlement and distributing the PAGA Payment, obtaining the Court's final approval of the
12 Settlement, and processing the Individual Settlement Payments, as set forth below.

13 3.5.1. Preliminary Approval and Certification. As soon as practicable after
14 execution of this Settlement, pending the Court's availability, Plaintiff will submit this Settlement
15 to the Court for preliminary approval of the Settlement, in accordance with California Rules of
16 Court, Rule 3.769(c). Such submission will include this Settlement, the proposed Notice Packet,
17 the proposed Preliminary Approval Order, and any memoranda and evidence as may be necessary
18 for the Court to determine that this Settlement is fair, adequate, and reasonable. The Parties agree
19 to request the Court to enter an order conditionally certifying the Settlement Class after the
20 preliminary approval hearing, in accordance with California Rules of Court, Rule 3.769(d).

21 3.5.2. Class Information. No more than twenty-one (21) calendar days after the
22 entry of the Preliminary Approval Order by the Court, Defendant shall provide the Settlement
23 Administrator with the Class Information for purposes of mailing Notice Packets to Class
24 Members. Defendant shall also provide the Settlement Administrator a separate list of PAGA
25 Members and dates of PAGA Members' employment with Defendant.

26 3.5.3. Notice by First Class U.S. Mail. Upon receipt of the Class Information,
27 the Settlement Administrator will perform a search on the National Change of Address database
28 to update the Class Members' addresses. No more than ten (10) calendar days after receiving the

1 Class Information from Defendant, as provided herein, the Settlement Administrator shall mail
2 copies of the Notice Packet to all Settlement Class Members by regular First-Class U.S. Mail.
3 The Settlement Administrator shall exercise its best judgment to determine the current mailing
4 address for each Class Member. The address identified by the Settlement Administrator as the
5 current mailing address shall be presumed to be the best mailing address for each Class Member.
6 It will be conclusively presumed that if an envelope so mailed has not been returned within twenty
7 (20) days of the mailing that the Class Member received the Notice Packet.

8 3.5.4. Undeliverable Notices. Any Notice Packets returned to the Settlement
9 Administrator as undeliverable on or before the Response Deadline shall be re-mailed to the
10 forwarding address affixed thereto or as described in paragraph 3.5.5 of this Settlement.

11 3.5.5. For each Class Member whose Notice Packet is returned, and a forwarding
12 address is not affixed thereto, there will be one skip trace by the Settlement Administrator. If an
13 updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet
14 to the Class Member at the updated mailing address so identified. One supplemental Notice
15 Packet shall be mailed to each Class Member whose original Notice Packet is returned as
16 undeliverable to the Settlement Administrator, if a forwarding or updated address can be
17 identified. Such re-mailing shall be made within five (5) business days of the Settlement
18 Administrator receiving notice that the respective Notice Packet was undeliverable. Any requests
19 to Defendant's Counsel by the Settlement Administrator for documents or information from
20 Defendant must be responded to within a reasonable amount of time by Defendant's Counsel. It
21 is the intent of the Parties that reasonable means be used to locate the Class Members and apprise
22 them of their rights.

23 3.5.6. Class Members to whom Notice Packets are resent after having been
24 returned undeliverable to the Settlement Administrator shall have fourteen (14) calendar days
25 thereafter, or until the Response Deadline has expired, whichever is later, to mail the Request for
26 Exclusion or a Notice of Objection. Notice Packets that are resent shall inform the recipient of
27 this adjusted deadline. The date of the postmark on the return envelope shall be the exclusive
28 means used to determine whether a Class Member has returned his or her Request for Exclusion

on or before the adjusted deadline. It will be conclusively presumed that if an envelope so mailed has not been returned within thirty (30) days of the mailing, that the Class Member received the Notice Packet. If a Class Member's Notice Packet is returned to the Settlement Administrator more than once as undeliverable, then an additional Notice Packet shall not be re-mailed.

3.5.7. Compliance with the procedures specified in paragraphs 3.5.3 through 3.5.6 of this Settlement shall constitute due and sufficient notice to Class Members of this Settlement and shall satisfy the requirement of due process. Nothing else shall be required of, or done by, the Parties, Class Counsel, and Defendant's Counsel to provide notice of the proposed Settlement.

3.6. Disputes. Class Members will have the opportunity during the 60-day response period, should they disagree with Defendant's records regarding their weeks worked during the Class Period, to provide a completed Class Workweek Dispute Form (attached hereto as **Exhibit B**), documentation and/or an explanation to show contrary weeks worked. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement. The Settlement Administrator's determination of the eligibility for and amount of any Individual Settlement Payment shall be binding upon the Class Member and the Parties.

3.7. Exclusions (Opt-Outs). The Notice Packet shall state that Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion Form (attached hereto as **Exhibit C**) by the Response Deadline. A Class Member may submit a Request To Be Excluded From Settlement form or a writing that contains: (1) the name, address, and the last four digits of the Social Security number and/or the entire Employee ID number of the Class Member requesting exclusion; (2) a clear statement requesting to be excluded from the Class Settlement; (3) must be signed by the Class Member; and (4) must be postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed a valid Request for Exclusion from this Settlement. The date of the postmark on the return mailing envelope shall

1 be the exclusive means used to determine whether a Request for Exclusion has been timely
2 submitted. Any Class Member who requests to be excluded from the Settlement in accordance
3 with the provisions of this paragraph will not be entitled to any recovery under the Settlement and
4 will not be bound by the terms of the Settlement. Class Members who receive a Notice Packet
5 but fail to submit a valid and timely Request for Exclusion on or before the Response Deadline,
6 which is sixty (60) days from the date of the mailing of the Notice Packet, shall be bound by all
7 terms of the Settlement and any Final Judgment entered in this Action if the Settlement is
8 approved by the Court. Any Class Member who does not request exclusion as set forth above is
9 deemed to have released all claims, including Released Claims against Released Parties, as set
10 forth herein and therefore by operation will be deemed a Settlement Class Member. At no time
11 shall any of the Parties or their counsel seek to solicit or otherwise encourage members of the
12 Class to submit Requests for Exclusion from the Settlement. Class Counsel shall not represent
13 any Class Member with respect to any such Request for Exclusion. Class Members who submit
14 a valid Request for Exclusion may not also submit a Notice of Objection. PAGA Members cannot
15 opt out or submit a Request for Exclusion

16 3.8. Objections. The Notice Packet shall state that Class Members who wish to object
17 to the Settlement shall submit a written statement of objection or complete an Objection to
18 Settlement form (attached hereto as **Exhibit D**) ("Notice of Objection") by the Response
19 Deadline, which is sixty (60) days from the date of the mailing of the Notice Packet, to the
20 Settlement Administrator. The Notice of Objection must be signed by the Class Member and
21 state: (1) the full name of the Class Member; (2) the dates of employment of the Class Member;
22 (3) the last four digits of the Class Member's Social Security number and/or the entire Employee
23 ID number; (4) the basis for the objection; and, (5) whether the Class Member intends to appear
24 at the Final Approval Hearing. The Notice of Objection must be postmarked by the Response
25 Deadline and returned to the Settlement Administrator at the specified address. Within five (5)
26 days of receiving a Notice of Objection from a Settlement Class Member, the Settlement
27 Administrator shall forward the Notice of Objection to Class Counsel and Defendant's Counsel.
28 The Parties shall thereafter lodge the Class Member's Notice of Objection with the Court. Class

1 Members, regardless of whether or not they submit a timely Notice of Objection, will have a right
2 to appear at the Final Approval Hearing, with or without an attorney, and have their objections
3 heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or otherwise
4 encourage Class Members to file or serve written objections to the Settlement or to appeal from
5 the Final Judgment. Class Counsel shall not represent any Class Member with respect to any such
6 objection.

7 3.9. Plaintiff's Participation. By executing this Settlement, Plaintiff hereby stipulates
8 he will not object to or exclude themselves from the Settlement in any way.

9 3.10. No Solicitation of Settlement Objections or Exclusions. The Parties and their
10 counsel agree to use their best efforts to carry out the terms of this Settlement. At no time shall
11 any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit
12 Notices of Objection to the Settlement or Requests for Exclusion from the Settlement, or to appeal
13 from the Court's Final Judgment.

14 3.11. Funding of the Gross Settlement Amount. This is a non-reversionary Settlement
15 in which Defendant is required to pay the entire Gross Settlement Amount. No portion of the
16 Gross Settlement Amount will revert to Defendant. Defendant is separately and solely
17 responsible for any employer payroll taxes owed as a result of the Settlement. Defendant shall
18 fund the Gross Settlement Amount by no later than thirty (30) calendar days after the Final
19 Approval Date. No release in this Settlement shall be effective until the Gross Settlement Amount
20 is fully funded.

21 3.11.1. No more than five (5) business days after Defendant makes the Gross
22 Settlement Amount payment, the Settlement Administrator shall provide the Parties with an
23 accounting of all anticipated payments from the Gross Settlement Amount. The Net Settlement
24 Amount shall be calculated by deducting from the Gross Settlement Amount the anticipated
25 payments for (1) Class Representative Service Award, as specified in this Settlement and
26 approved by the Court; (2) Class Counsel Fees, as specified in this Settlement and approved by
27 the Court; (3) Class Counsel Costs, as specified in this Settlement and approved by the Court;
28 (4) Settlement Administration Costs, as specified in this Settlement and approved by the Court;

1 and (5) the LWDA PAGA Allocation, as specified in this Settlement and approved by the Court.
2 The Net Settlement Amount shall be distributed in Individual Settlement Payments in accordance
3 with Paragraphs 3.12, 3.12.1 and 3.13.

4 3.12. Individual Settlement Payments. Each Settlement Class Member shall be eligible
5 to receive an Individual Settlement Payment, which is a share of the Net Settlement Amount,
6 based on the number of weeks worked by the Settlement Class Member for Defendant during the
7 Class Period, as a proportion of all weeks worked by all Class Members for Defendant during the
8 Class Period. Individual Settlement Payments shall be paid by check pursuant to the formula set
9 forth in Paragraph 3.12.1 and 3.13 below. Individual Settlement Payments shall be mailed by
10 regular First-Class U.S. Mail to Settlement Class Members' last known mailing address no later
11 than fifteen (15) calendar days after Defendant makes the payment of the Gross Settlement
12 Amount. Individual Settlement Payments shall specifically indicate that they are void if not
13 negotiated within one hundred eighty (180) days of their issuance. Individual Settlement
14 Payments reflect settlement of a dispute regarding wages, interest, and penalties. Individual
15 Settlement Payments will be allocated as follows: one-third as wages; and two-thirds as interest
16 and penalties. The "wage" portion of each Individual Settlement Payment will be reduced by any
17 Employee Taxes. The Settlement Administrator shall issue the appropriate tax documents
18 associated with the Individual Settlement Payments, including an IRS Form W-2 for the amounts
19 allocated as "wages" and an IRS Form 1099 for the amounts allocated as "interest" or "penalties."

20 3.12.1. Individual Settlement Payment Formula. After deducting the Class Counsel Fees
21 and Class Counsel Costs, the LWDA PAGA Allocation, Class Representative Service Awards,
22 and Settlement Administration Costs, the remaining funds (the "Net Settlement Amount"), shall
23 be distributed as follows: The Settlement Administrator shall divide the Net Settlement Amount
24 by the total number of workweeks Class Members worked for Defendant during the Class Period
25 in order to determine the amount each Settlement Class Member is entitled to for each workweek
26 he or she worked for Defendant (the "Weekly Amount") during the Class Period. The Settlement
27 Administrator shall multiply the Weekly Amount by the estimated total number of workweeks
28 that each Settlement Class Member worked for Defendant during the Class Period. The product

1 of each calculation represents the gross Individual Settlement Payment for the respective
2 Settlement Class Member. The Settlement Administrator shall then deduct Employee Taxes
3 attributable to wages to arrive at the net Individual Settlement Payment for each respective Class
4 Member. Within twenty-one (21) calendar days after Preliminary Approval, Defendant shall
5 provide the Settlement Administrator with any information reasonably necessary to perform the
6 calculation of number of workweeks for each Class Member, and any other reasonably required
7 information the Settlement Administrator requests to perform the calculations required under
8 this Settlement. Defendant shall have no responsibility for deciding the validity of any
9 Individual Settlement Payment or any other payments made pursuant to this Settlement, shall
10 have no involvement in or responsibility for the determination or payment of Employee Taxes,
11 and shall have no liability for any errors made with respect to such Employee Taxes.

12 3.13. **PAGA Allocation & Related Release.** Out of the Maximum Settlement Amount
13 that is ultimately preliminarily approved, Defendant shall pay a total of Twenty Thousand Dollars
14 (\$20,000.00) to resolve the PAGA Claims (as defined below) of the Settlement Class (the “PAGA
15 Payment”). Of this amount, 75% (i.e. \$15,000) will be paid to the LWDA and 25% (i.e.
16 \$5,000.00) will be distributed on a pro rata per pay period basis to the PAGA Members who
17 worked at any time from October 3, 2021 through November 30, 2023. Each PAGA Member’s
18 Individual PAGA Payment will be calculated based on the total number of pay periods he or she
19 worked during the PAGA Class Period. To establish the pay period value, the Settlement
20 Administrator will first determine the total number of pay periods worked by PAGA Members
21 during the PAGA Class Period. 25% of the PAGA Settlement Fund will then be divided by the
22 total number of pay periods worked by PAGA Members during the Settlement Period to
23 determine the pay period value. The PAGA Member Allocation represents the portion of civil
24 penalties awarded directly under PAGA, and shall be allocated as 100% penalties. The Settlement
25 Administrator will report the PAGA Payments on IRS 1099 Forms. PAGA Members will not be
26 required to submit a claim form in order to be issued a check for their share of the PAGA Payment.
27 The PAGA Members will not have the opportunity to opt out of, or object to, the PAGA Payment
28 and release of the PAGA Claims. Upon receipt of the PAGA Payment, PAGA Members shall be

1 deemed to have released the PAGA claims as to civil and statutory penalties, and any other
2 interest, liquidated damages, attorney's fees and costs related to PAGA.

3 3.13.1. Settlement Class Members are not eligible to receive any compensation
4 other than the Individual Settlement Payment (and PAGA Payment for PAGA Members), and
5 they may only receive an Individual Settlement Payment if they do not submit a valid and timely
6 Request for Exclusion to opt out of the Settlement. PAGA Members will receive their portion
7 of the PAGA Payment regardless of whether they submit a valid and timely Request for
8 Exclusion to opt out of the Settlement. Plaintiff, however, are also eligible to receive a Class
9 Representative Service Awards.

10 3.13.2. No benefit, including but not limited to pension benefits, shall increase or
11 accrue as a result of any payment made pursuant to this Settlement.

12 3.13.3. If an Individual Settlement Payment is returned to the Settlement
13 Administrator as undeliverable and does not have a forwarding address, the Settlement
14 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace
15 search. If the returned Individual Settlement Payment has a forwarding address, or another
16 address is identified, the Settlement Administrator shall mail the Individual Settlement Payment
17 to the forwarding, or newly-identified, address. If an Individual Settlement Payment is returned
18 to the Settlement Administrator a second time as undeliverable, the Settlement Administrator
19 shall not attempt any further re-mailing of that Individual Settlement Payment, but shall hold
20 such Individual Settlement Payment until it becomes void. Any settlement checks that remain
21 uncashed one hundred eighty (180) calendar days after issuance shall be void ("Voided
22 Checks").

23 3.13.4. Any settlement checks that are not cashed within one hundred eighty (180)
24 days after mailing shall thereafter be paid to the California State Controller in the name of the
25 Class Member who did not cash his or her check.

26 3.14. Class Representative Service Award. Defendant agrees not to oppose or object to
27 any application or motion by Plaintiff for Class Representative Service Award, not to exceed Five
28 Thousand Dollars (\$5,000.00) for Plaintiff, as consideration for Plaintiff's time and effort in

1 bringing and prosecuting this matter. The Class Representative Service Award shall be paid to
2 Plaintiff from the Gross Settlement Amount no later than fifteen (15) calendar days after
3 Defendant funds the Gross Settlement Amount. The Settlement Administrator shall issue an IRS
4 Form 1099 — MISC to Plaintiff for their Class Representative Service Award. Plaintiff shall be
5 solely and legally responsible for payment of all applicable taxes on their Class Representative
6 Service Awards and shall hold Defendant harmless from any claim or liability for taxes, penalties,
7 or interest arising as a result of their Class Representative Service Award. The Class
8 Representative Service Award shall be in addition to Plaintiff's Individual Settlement Payment
9 as a Settlement Class Member. If the Court awards lesser amounts than the Class Representative
10 Service Award requested, then any portion of the requested amount not awarded to Plaintiff shall
11 be added to the Net Settlement Amount. Plaintiff shall not have the right to revoke this agreement
12 to the Settlement on the grounds the Court did not approve any or all of their request for a Class
13 Representative Service Award; it shall remain binding. Any adjustments made by the Court to
14 the requested Class Representative Service Award shall not be deemed a material modification
15 of this Agreement.

16 3.15. Class Counsel Fees and Costs. Defendant agrees not to oppose or object to any
17 application or motion by Class Counsel for Class Counsel Fees in the amount of one-third of the
18 Gross Settlement Amount or Eighty-Six Thousand Six Hundred and Sixty Six Dollars And Sixty
19 Six Cents (\$86,666.66) and Class Counsel Costs not to exceed Fourteen Thousand Dollars
20 (\$14,000.00) from the Gross Settlement Amount. The Class Counsel Fees and Class Counsel
21 Costs shall be paid no later than fifteen (15) calendar days after the Defendant funds the Gross
22 Settlement Amount. Class Counsel shall be solely and legally responsible to pay all applicable
23 taxes on the payments made pursuant to this paragraph. The Settlement Administrator shall issue
24 an IRS Form 1099 — MISC to Class Counsel for the payments made pursuant to this paragraph.
25 This Settlement is not contingent upon the Court awarding Class Counsel any particular amount
26 in attorneys' fees and costs. Any amount requested by Class Counsel for the Class Counsel Fees
27 and Class Counsel Costs and not granted by the Court shall become part of the Net Settlement
28 Amount.

1 3.16. PAGA Allocation. Subject to Court approval, the Parties shall allocate a total of
2 Twenty Thousand Dollars (\$20,000.00) from the Gross Settlement Amount for the compromise
3 of claims brought under the Labor Code Private Attorney's General Act of 2004 (the "PAGA
4 Allocation").

5 3.17. LWDA PAGA Allocation. The LWDA PAGA Allocation shall be Fifteen
6 Thousand Dollars (\$15,000.00), representing 75% of the PAGA Allocation, and shall be paid to
7 California's Labor Workforce Development Agency ("LWDA") from the Gross Settlement
8 Amount by the Settlement Administrator no later than fifteen (15) calendar days after Defendant
9 funds the Gross Settlement Amount. The remaining Five Thousand Dollars (\$5,000.00),
10 representing 25% of the PAGA Allocation, shall be distributed to PAGA Members.

11 3.18. Defendant's Option to Terminate Settlement. If, after the Response Deadline and
12 before the Final Approval Hearing, ten percent (10%) or more of the number of Settlement Class
13 Members submit timely and valid Requests for Exclusion from the Settlement, Defendant shall
14 have, in its sole discretion, the option to terminate this Settlement. Defendant shall exercise its
15 option to terminate, if they wish, prior to the Final Approval Hearing, provided the Settlement
16 Administrator has provided Defendant the number and percentage of valid and timely Requests
17 for Exclusion no later than fourteen (14) calendar days prior to the Final Approval Hearing. If
18 Defendant decides to void the Settlement, then the Settlement and conditional class certification
19 shall be considered void, and neither the Settlement, conditional class certification, nor any of the
20 related negotiations or proceedings, shall be of any force or effect, and the Parties shall stand in
21 the same position, without prejudice, as if this Settlement had been neither entered into nor filed
22 with the Court. Should Defendant void the Settlement under this paragraph, Defendant shall be
23 responsible for all Settlement Administration Costs incurred by the Settlement Administrator
24 through the date that Defendant notifies the Settlement Administrator that they are exercising the
25 option to terminate the Settlement.

26 3.19. Settlement Administration Costs. The Settlement Administrator shall be paid for
27 the costs of administration of the Settlement from the Gross Settlement Amount. Such costs of
28 administration are not to exceed Six Thousand Dollars (\$6,000.00), unless the court approves a

1 higher amount. No fewer than twenty (20) days prior to the Final Approval Hearing, the
2 Settlement Administrator shall provide the Parties with a statement detailing the costs of
3 administration. The Settlement Administrator, on Defendant's behalf, shall have the authority
4 and obligation to make payments, credits and disbursements, including payments and credits in
5 the manner set forth in this Settlement, to Settlement Class Members, calculated in accordance
6 with the methodology set out in this Settlement and orders of the Court. The Parties agree to
7 cooperate in the administration of the Settlement and to make all reasonable efforts to control and
8 minimize the costs and expenses incurred in administration of the Settlement. The Parties each
9 represent they do not have any financial interest in the Settlement Administrator or otherwise
10 have a relationship with the Settlement Administrator that could create a conflict of interest. The
11 Settlement Administrator shall be responsible for: processing and mailing all payments described
12 in the Settlement to the Plaintiff, Class Counsel, Settlement Class Members and Verified
13 Settlement Class Members, the LWDA, tax authorities,; printing and mailing the Notice Packets
14 to the Settlement Class Members as called for in this Settlement and ordered by the Court;
15 receiving and reporting Notice of Objections and Requests for Exclusion submitted by Class
16 Members; providing declaration(s) as necessary in support of preliminary and/or final approval
17 of this Settlement; and other tasks as the Parties mutually agree or the Court orders the Settlement
18 Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised
19 of the performance of all Settlement Administrator responsibilities. Any legally mandated tax
20 reports, tax forms, tax filings, or other tax documents required by administration of this Settlement
21 shall be prepared by the Settlement Administrator. Any expenses incurred in connection with
22 such preparation shall be Settlement Administration Costs. The Settlement Administrator shall
23 be paid the Settlement Administration Costs no later than fifteen (15) calendar days after the
24 Defendant funds the Gross Settlement Amount.

25 3.20. Final Approval Hearing. At a reasonable time following the Response Deadline,
26 the Court shall hold the Final Approval Hearing, where objections, if any, may be heard, and the
27 Court shall determine amounts properly payable for (i) the Class Counsel Fees, (ii) the Class
28 Counsel Costs, (iii) the Class Representative Service Award, (iv) the LWDA PAGA Allocation;

1 and (v) the Settlement Administration Costs.

2 3.21. Entry of Final Judgment. If the Court approves this Settlement at the Final
3 Approval Hearing, the Parties shall request that the Court enter the Final Judgment after the Gross
4 Settlement Amount has been fully funded, with the Court retaining jurisdiction over the Parties
5 to enforce the terms of the judgment. If the Court grants Final Approval to the Settlement, notice
6 of Final Approval shall be posted on the Settlement Administrator's website, at
7 www.phoenixclassaction.com.

8 3.22. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement
9 Class Members pursuant to this Settlement will not count as earnings or compensation for
10 purposes of any benefits (e.g., pensions or retirement plans) sponsored by Defendant. It is
11 expressly understood and agreed that the receipt of Individual Settlement Payments and/or PAGA
12 Payments shall not entitle any Settlement Class Member to additional compensation or benefits
13 under any collective bargaining agreement or under any bonus, contest, or other compensation or
14 benefit plan or agreement in place during the period covered by the Settlement, nor shall it entitle
15 any Settlement Class Member to any increased pension and/or retirement, or other deferred
16 compensation benefits. It is the intent of the Parties that payments from Net Settlement Amount
17 provided for in this Settlement are the sole payments to be made by Defendant to Settlement Class
18 Members in connection with this Settlement, with the sole exception of Plaintiff's Class
19 Representative Service Award, and that the Settlement Class Members are not entitled to any new
20 or additional compensation or benefits as a result of having received funds from the Net
21 Settlement Amount. Furthermore, the receipt of Individual Settlement Payments by Settlement
22 Class Members shall not, and does not, by itself establish any general, special, or joint
23 employment relationship between and among the Settlement Class Member(s) and Defendant.

24 3.23. Nullification of Settlement. In the event: (i) the Court does not enter the
25 Preliminary Approval Order as specified herein; (ii) the Court does not grant final approval of the
26 Settlement as provided herein; (iii) the Court does not enter a Final Judgment as provided herein;
27 or (iv) the Settlement does not become final for any other reason, this Settlement shall be null and
28 void and any order or judgment entered by the Court in furtherance of this Settlement shall be

1 treated as void from the beginning. In such a case, the Parties and any funds to be awarded under
2 this Settlement shall be returned to their respective statuses as of the date and time immediately
3 prior to the execution of this Settlement, and the Parties shall proceed in all respects as if this
4 Settlement had not been executed. In the event an appeal is filed from the Court's Final Judgment,
5 or any other appellate review is sought, administration of the Settlement shall be stayed pending
6 final resolution of the appeal or other appellate review.

7 3.24. No Admission by the Parties. Defendant denies any and all claims alleged in this
8 Action and denies all wrongdoing whatsoever. This Settlement is not a concession or admission,
9 and shall not be used against Defendant as an admission or indication, with respect to any claim,
10 of any fault, concession, or omission by Defendant. Neither this Settlement, nor any of its terms
11 and conditions, nor any of the negotiations connected with it, is a concession or admission, and
12 none shall be used against Defendant as an admission or indication with respect to any claim of
13 any fault, concession, or omission by Defendant, or that class certification is proper under the
14 standard applied to contested certification motions. The Parties stipulate and agree to the
15 certification of the Settlement for settlement purposes only. The Parties further agree that this
16 Settlement will not be admissible in this or any other proceeding as evidence that either: (i) a class
17 action should be certified or (ii) Defendant is liable to Plaintiff or any Class Member, other than
18 according to the terms of this Settlement.

19 3.25. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning
20 the interpretation, calculation or payment of settlement claims, or other disputes regarding
21 compliance with this Settlement shall be resolved as follows:

22 3.25.1. If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class
23 Members, or Defendant at any time believe that the other Party or Parties have breached or acted
24 contrary to the Settlement, that Party shall notify the other Party or Parties in writing of the alleged
25 violation.

26 3.25.2. Upon receiving notice of the alleged violation or dispute, the responding
27 Party shall have ten (10) days to correct the alleged violation and/or respond to the initiating Party
28 with the reasons why the Party disputes all or part of the allegation.

1 3.25.3. If the response does not address the alleged violation to the initiating
2 Party's satisfaction, the Parties shall negotiate in good faith for up to ten (10) days to resolve their
3 differences.

4 3.25.4. Prior to the Court's involvement pursuant to paragraph 3.35, if the Parties
5 still cannot resolve a dispute, the Parties shall utilize the services of the Jill Sperber, Esq.
6 (Mediator) in a good-faith attempt to mediate and resolve the dispute.

7 3.25.5. If the Parties are unable to resolve their differences after twenty (20) days,
8 either Party may file an appropriate motion for enforcement with the Court.

9 3.26. Exhibits and Headings. The terms of this Settlement include the terms set forth in
10 Exhibits A, B, C and D, which are attached to this Settlement and incorporated by this reference
11 as though fully set forth in this paragraph. Any Exhibits to this Settlement are an integral part of
12 the Settlement. The descriptive headings of any paragraphs or sections of this Settlement are
13 inserted for convenience of reference only and do not constitute a part of this Settlement.

14 3.27. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the
15 Action and thereafter implement and complete the Settlement.

16 3.28. Amendment or Modification. This Settlement may be amended or modified only
17 by a written instrument signed by all the Parties and counsel for all Parties or their successors-in-
18 interest.

19 3.29. Entire Settlement. This Settlement and any attached Exhibits constitute the entire
20 agreement among these Parties, and no oral or written representations, warranties, or inducements
21 have been made to any Party concerning this Settlement or its exhibits, other than the
22 representations, warranties, and covenants contained and memorialized in the Settlement and its
23 exhibits. No other prior or contemporaneous written or oral agreements may be deemed binding
24 on the Parties.

25 3.30. Authorization to Enter into Settlement. Counsel for all Parties warrant and
26 represent they are expressly authorized by the Parties whom they represent to negotiate this
27 Settlement and to take all appropriate actions required or permitted to be taken by such Parties
28 pursuant to this Settlement to effectuate its terms, and to execute any other documents required

1 to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each
2 other and use their best efforts to affect the implementation of the Settlement. In the event the
3 Parties are unable to reach agreement on the form or content of any document needed to
4 implement the Settlement, or on any supplemental provisions that may become necessary to
5 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
6 such disagreement. The person signing this Settlement on behalf of Defendant represents and
7 warrants that he or she is authorized to sign this Settlement on behalf of Defendant. Plaintiff
8 represent and warrant they are authorized to sign this Settlement and that they have not assigned
9 any claim, or part of a claim, covered by this Settlement to a third-party.

10 3.31. No Prior Assignments. The Parties and their counsel represent, covenant, and
11 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
12 to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
13 action, cause of action or right herein released and discharged.

14 3.32. California Law Governs. All terms of this Settlement and the exhibits hereto shall
15 be governed by and interpreted according to the laws of the State of California.

16 3.33. This Settlement is Fair, Adequate and Reasonable. The Parties believe this
17 Settlement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
18 Settlement after extensive arms-length negotiations, taking into account all relevant factors,
19 present and potential.

20 3.34. Jurisdiction of the Court. In accordance with California Rule of Court 3.769(h),
21 the Parties agree that the Court shall retain jurisdiction with respect to the interpretation,
22 implementation, and enforcement of the terms of this Settlement and all orders and judgments
23 entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction
24 of the Court for purposes of interpreting, implementing, and enforcing this Settlement and all
25 orders and judgments entered in connection therewith.

26 3.35. Invalidity of Any Provision. Before declaring any provision of this Settlement
27 invalid, the Court shall first attempt to construe the provision to be valid to the fullest extent
28 possible, consistent with applicable precedents.

1 3.36. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
2 conditional class certification for purposes of this Settlement only.

3 3.37. Cooperation. The Parties agree to cooperate fully with one another to accomplish
4 and implement the terms of this Settlement. Such cooperation shall include, but not be limited
5 to, execution of such other documents and the taking of such other action as may be reasonably
6 necessary to fulfill the terms of this Settlement. The Parties to this Settlement shall use their best
7 efforts, including all efforts contemplated by this Settlement and any other efforts that may
8 become necessary by Court order, or otherwise, to effectuate this Settlement and its terms.

9 3.38. Publicity. Plaintiff agrees not to disclose or publicize the Settlement Agreement
10 contemplated herein, the facts of the Settlement Agreement, its terms or contents, or the
11 negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly,
12 to any person or entity, except to Settlement Class members and as shall be contractually required
13 to effectuate the terms of the Settlement Agreement as set forth herein. However, for the limited
14 purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class
15 Counsel may disclose the names of the Parties in this Action, the venue/case number of this
16 Action, and a general description of the Action, to a court in a declaration by Class Counsel. Class
17 Counsel may also include a general description of the Settlement on their respective websites, but
18 may not include the name(s) of any of the Parties, including the Defendant, or any of the Released
19 Parties, or the case name or case number of the Action.

20 3.39. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
21 and conditions of this Settlement. Accordingly, this Settlement will not be construed more strictly
22 against one party than another merely by virtue of the fact that it may have been prepared by
23 counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations
24 between the Parties, all Parties have contributed to the preparation of this Settlement.

25 3.40. Representation by Counsel. The Parties acknowledge that they have been
26 represented by counsel throughout all negotiations that preceded the execution of this Settlement,
27 and that this Settlement has been executed with the consent and advice of counsel, and reviewed
28 in full. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the

1 Settlement.

2 3.41. All Terms Subject to Final Court Approval. All amounts and procedures described
3 in this Stipulation are subject to final Court approval.

4 3.42. Notices. Unless otherwise specifically provided, all notices, demands or other
5 communications in connection with this Settlement shall be: (1) in writing; (2) deemed given on
6 the third business day after mailing; and (3) sent via United States registered or certified mail,
7 return receipt requested, addressed as follows:

8 **To Plaintiff:**

9 Kevin Mahoney, Esq.
10 John A. Young, Esq.
11 MAHONEY LAW GROUP
12 249 East Ocean Boulevard, Suite 814
13 Long Beach, CA 90802
14 Telephone: (562) 590-5550
15 Facsimile: (562) 590-8400

To Defendant:

Mark J. Butler
MARK BUTLER & ASSOCIATES
Telephone: (949) 500-6277
2100 Main Street, Suite 220
Irvine, CA 92614

Robert G. Loewy
LAW OFFICE OF ROBERT G LOEWY, P.C.
20 Enterprise, Suite 310
Aliso Viejo, CA 92656
Telephone: (949) 468-7150
Facsimile: (949) 242-5105

17 3.43. Execution by Settlement Class Members. It is agreed that it is impossible or
18 impractical to have each Settlement Class Member execute this Settlement. The Notice of
19 Settlement will advise all Settlement Class Members of the binding nature of the release and such
20 shall have the same force and effect as if each Settlement Class Member executed this Settlement.

21 3.44. Execution by Plaintiff and Defendant. Plaintiff and Defendant, by signing this
22 Settlement, are bound by the terms herein.

23 3.45. Binding Agreement. The Parties warrant that they understand and have full
24 authority to enter into this Settlement, and further intend that this Settlement will be fully
25 enforceable and binding on all Parties, and agree that it will be admissible and subject to
26 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
27 provisions that otherwise might apply under federal or state law.

28 3.46. Counterparts. This Settlement shall become effective upon its execution by all

1 of the undersigned. Plaintiff and Defendant may execute this Settlement in counterparts, and
2 execution of counterparts shall have the same force and effect as if each had signed the same
3 instrument. Copies of the executed Settlement shall be effective for all purposes as though the
4 signatures contained therein were original signatures.

5 3.47. The Parties, Class Counsel and Defendant's Counsel represent that they are not
6 aware of any other pending matter or action asserting claims that will be extinguished or
7 affected by the Settlement.
8

9
10 Dated:

7/3/23

On behalf of Triton Air, Inc.



Printed: Marker Anderson
Title: President

11
12
13
14
15
16
17 Dated:

07 / 08 / 2023

Ethan Rogers



EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

**SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF ORANGE
ROGERS V. TRITON AIR, INC., CASE NO. 30-2022-01284893-CU-OE-CXC**

A court authorized this notice. This is not a solicitation from a lawyer.

ATTENTION: IF YOU HAVE BEEN EMPLOYED BY TRITON AIR, INC., AS A NON-EXEMPT HOURLY PAID EMPLOYEE IN CALIFORNIA AT ANY TIME DURING THE PERIOD BEGINNING OCTOBER 6, 2018 THROUGH NOVEMBER 30, 2022, YOU ARE ENTITLED TO A SHARE OF A PROPOSED CLASS ACTION SETTLEMENT.

Triton Air's records show that, between October 6, 2018 through November 30, 2022 you worked <<weeks worked>> as a non-exempt employee. Based on these records, your estimated minimum settlement payment is <<estimated amount>>.

TO UNDERSTAND YOUR RIGHTS, READ THIS NOTICE CAREFULLY.

- A proposed class action settlement (the "Settlement") has been reached between Plaintiff Ethan Rogers ("Plaintiff"), on behalf of himself and the below-defined Settlement Class, and Defendant Triton Air, Inc. ("Defendant").
- The Settlement resolves a class action lawsuit (the "Action") about Plaintiff's allegations that Defendant failed to provide meal periods, failed to provide rest periods, failed to pay minimum wage, failed to pay overtime, failed to pay all wages at termination, failed to pay waiting time penalties, failed to provide accurate wage statements, engaged in unfair business practices, failed to reimburse for necessary business expenditures and is liable for civil penalties. Defendant denies all liability to Settlement Class Members, asserts that it properly and timely compensated employees for all wages owed, including minimum wages, overtime wages, and final wages; properly and timely provided accurate itemized wage statements; properly and timely provided meal and rest periods; properly reimbursed employees, fully complied with all applicable wage and hour laws; has not engaged in any unfair business practices; and has entered into the Settlement solely for purposes of resolving this dispute.
- The Settlement provides for settlement payments based on the number of weeks you worked while employed by Defendant, in a non-exempt position, between October 6, 2018 through November 30, 2022.

Your estimated minimum settlement payment and covered weeks worked during the relevant period are stated above and described further below.

OVERVIEW OF YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT	
DO NOTHING	You will automatically receive a settlement payment in exchange for which, whether or not you cash or deposit the payment, you will be bound by all terms of the Settlement and any Final Judgment entered in this Action if the Settlement receives final approval by the Court, and you will give up your rights to be part of any other lawsuit against Defendant involving the same or similar legal claims as the ones in this Action, based on the facts alleged in this Action. You will be mailed a settlement check at the address where this notice was mailed (unless you timely provide a forwarding address to the Settlement Administrator).
EXCLUDE YOURSELF FROM THE CLASS	Submit a request for exclusion post marked no later than [Response Deadline]. This is the only way for you to be part of any other lawsuit against Defendant involving the same or similar legal claims as the ones in this Action. If you submit a Request for Exclusion, you will <u>not</u> receive a class settlement payment and you will <u>not</u> be bound by the terms of the Settlement. If you request to be excluded from the Settlement, you will still receive a PAGA individual payment if you worked during the PAGA Period (October 3, 2021 through November 30, 2022) also referred to as the “PAGA Class Period”, and shall be bound by the PAGA release.
OBJECT	If you wish to object to the Settlement, you must submit a written Objection and any supporting papers to the Settlement Administrator. The Objection must be postmarked no later than [Response Deadline]. You may also attend the Final Approval Hearing, with or without an attorney, to voice your objections (whether you had previously mailed a written objection or not).
GO TO THE HEARING	You may also attend the Final Approval Hearing, with or without an attorney, to voice your objections, if any (whether you had previously mailed a written objection or not). You can still submit a claim form. If the Court approves the Settlement, you will be bound by it.

- These rights and options, and how to exercise them, are explained in more detail in this notice.
- The Court handling this Action still has to decide whether to grant final approval of the Settlement. Settlement payments will only be issued if the Court grants final approval of the Settlement.
- Additional information regarding the Settlement is available through the Settlement Administrator or Class Counsel, whose contact information is provided in this notice.

BASIC INFORMATION

1. Why Did I Get This Notice?

Defendant's records show that you are, or have been, employed by it as a non-exempt employee at some point in California during the period from October 6, 2018 through November 30, 2022. This notice explains the Action, the Settlement, and your legal rights.

The lawsuit is known as *Rogers v. Triton Air, Inc.*, and is pending in the Superior Court of California for the County of Orange, Case No. 30-2022-01284893-CU-OE-CXC (the "Action"). Ethan Rogers is called the Plaintiff, and the company he sued, Triton Air, Inc., is called the Defendant.

2. What is the Action About?

The Action generally involves claims under California's wage and hour laws. Plaintiff is a former non-exempt employee of Defendant. Plaintiff alleges that Defendant did not compensate its employees for all hours worked, did not provide them with meal and rest breaks, did not provide accurate itemized wage statements, failed to pay wages upon ending employment, and failed to indemnify for expenditures. As a result, Plaintiff alleges that he and Settlement Class Members (defined in response to Question 4 below) are entitled to recover unpaid wages, including overtime wages, interest, reimbursement of business expenditures, and penalties. Defendant denies that it engaged in any wrongful conduct or that it violated the law in any way, and it believes that Plaintiff and the Settlement Class were properly compensated and provided meal and rest breaks, reimbursement for necessary business expenditures, and accurate itemized wage statements.

3. Why is This A Class Action?

Class action lawsuits are generally used where a large number of individuals are believed to be affected. In a class action, one or more persons, called the "Plaintiff" (in this case, Ethan Rogers), sue on behalf of people who have similar alleged claims. All of these people are a "class" or "class members." Once the class is certified, the Court resolves the issues for all class members, except for those who exclude themselves from the class. Class certification does not mean that there was any wrongdoing on the part of Defendant. On **[insert date]**, the Honorable Peter Wilson issued an order conditionally certifying the Settlement Class for settlement purposes only.

4. Who Is In The Settlement Class?

"Settlement Class Members" or "Settlement Class" means all non-exempt, hourly paid employees currently and formerly employed by Defendant in the State of California at any time from October 6, 2018 through November 30, 2022, that have not elected to be excluded

5. Why Is There A Settlement?

After conducting thorough investigation, including review of policies, payroll records, time records and personnel files, both sides have agreed to the Settlement as described in this notice to avoid the cost and risk of further litigation. The Settlement does not mean that any law was broken or that Defendant engaged in any wrongdoing. Defendant denies all of the claims asserted in the Action and denies that it has violated any laws. A settlement permits the parties to avoid the cost, delay, and uncertainty of trial, and permits eligible Class Members to receive some compensation sooner, rather than engaging in years of further litigation – including motions for summary judgment, trial, and an appeal – with the possibility of no recovery at all. The Settling Parties disagree on both liability and damages, and do not agree on the average amount of damages, if any, that would be recoverable if the Class Representative were to prevail at trial on each claim. Nonetheless, Defendant has concluded that further defense of this Action would be protracted and expensive, and that it is desirable that this Action be fully and finally settled upon the terms and conditions approved by the Court in order to limit further expense and avoid the burden of protracted litigation. Defendant entered into a proposed Settlement without in any way admitting to or acknowledging any fault, liability or wrongdoing of any kind. There has been no adverse determination by any court against Defendant or anyone else on the merits of the claims asserted in the Complaint.

THE SETTLEMENT BENEFITS—WHAT YOU GET

6. What Does The Settlement Provide?

Under the terms of the Settlement, Defendant agrees to pay a Gross Settlement Amount of Two Hundred Sixty Thousand Dollars (\$260,000.00). Defendant will fund the Gross Settlement Amount no later than thirty (30) days of the Final Approval Date. Individual Settlement Payments will be mailed by regular First-Class U.S. Mail to Settlement Class Members' last known address no later than fifteen (15) calendar days after Defendant funds the Gross Settlement Amount.

Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees, not to exceed Eighty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$86,666.66), which is 33-1/3% of the Gross Settlement Amount; attorneys' actual costs, not to exceed Fourteen Thousand Dollars (\$14,000.00); Class Representative Enhancement Award to the Plaintiff for his service as Plaintiff and class representative, not to exceed Five Thousand Dollars (\$5,000.00); a payment of Fifteen Thousand Dollars (\$15,000.00) to the State of California Labor and Workforce Development Agency ("LWDA") for alleged civil penalties; and the fees and expenses of the Settlement Administrator, Phoenix Settlement Administrators, not to exceed Six Thousand Dollars (\$6,000.00), which will result in a net amount payable by Defendant for distribution to Settlement Class Members who do not opt out ("The Net Settlement Amount"). The remaining Five Thousand Dollars (\$5,000.00) of the PAGA Allocation, will be paid to Class Members who worked during the PAGA Period based on the number of pay periods worked by the Class Member during the PAGA Period, October 3, 2021 through November 30, 2022.

Individual Class Settlement Payment Formula: The Net Settlement Amount will be distributed to Settlement Class Members who do not opt out of the Settlement ("Participating Class Members"), as follows: Compensable weeks will be all weeks in which Participating Class Members worked for Defendant in California between October 6, 2018 through November 30, 2022 ("Class Period"). The Settlement Administrator shall divide the Net Settlement Amount by the total number of workweeks all Participating Class Members worked during the Class Period in California for Defendant in order to determine the amount to which each Participating Class Member is entitled for each workweek he or she was employed by Defendant (the "Weekly Amount") during the Class Period. Workweeks are determined by the Settlement Administrator calculating the number of days each Participating Class Member worked at Defendant was employed during the Class Period and divide by seven (7). The Settlement Administrator will multiply the Weekly Amount by the total number of workweeks that each Participating Class Member worked during the Class Period for Defendant to arrive at the gross Individual Settlement Payment for each Participating Class Member. The Settlement Administrator will then deduct all Employee Taxes attributable to wages to arrive at the net Individual Settlement Payment for each Participating Class Member.

No benefit, including but not limited to pension benefits, shall increase or accrue as a result of any payment made as a result of the Settlement.

The Parties recognize that the settlement amounts to be paid to the Participating Class Members are for wages, interest, and penalties. The Parties agree that fifty percent (50%) of the Participating Class Member payments shall be reported as wages on IRS Form W-2 and its state and local equivalents, and fifty percent (50%) shall be reported as interest and penalties on IRS Form 1099 and its state and local equivalents. **The Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to any settlement amounts to be paid to the Participating Class Members. Each Participating Class Member will assume any employee tax obligations or consequences that may arise from any settlement amount paid to him or her and should consult with a tax expert if he or she has questions.** Each Participating Class Member's pro rata gross distribution amount will be reduced by the amount of any required employee-related tax deductions.

Individual Class Settlement Payment to Participating Class Members: Each Participating Class Member shall be eligible to receive an Individual Settlement Payment, which is a share of the Net Settlement Amount, based on the number of weeks worked by the Participating Class Member for Defendant during the Class Period, as a proportion of all weeks worked by all Participating Class Members for Defendant during the Class Period.

Individual PAGA Settlement Payment Formula: The Settlement Administrator shall divide the PAGA Allocation to be distributed to Class Members that worked during the PAGA Period regardless of whether they opt-out of the Individual Class Settlement Payment. Twenty-Five percent (25%) of the PAGA Allocation or Five Thousand Dollars (\$5,000.00) shall be distributed to Class Members by the total number of pay periods they worked during the PAGA Period. Each Class Member's Individual PAGA Payment will be calculated based on the total number of pay periods he or she worked during the PAGA Period (October 3, 2021 through November 30, 2022). To establish the pay period value, the Settlement Administrator will first determine the total number of pay periods worked by Class Members during the PAGA Period. Twenty-Five percent (25%) of the PAGA

Allocation will then be divided by the total number of pay periods worked by Class Members during the PAGA Period to determine the pay period value. The product of each calculation represents the gross Individual PAGA Settlement Payment for the respective Class Member.

TRITON AIR'S RECORDS INDICATE YOU WORKED APPROXIMATELY [INSERT WORKWEEKS] WORKWEEKS DURING THE SETTLEMENT CLASS PERIOD.

TRITON AIR'S RECORDS INDICATE YOU WORKED APPROXIMATELY [INSERT PAY PERIODS] PAY PERIODS DURING THE PAGA PERIOD.

BASED ON YOUR TOTAL WORKWEEKS DURING THE CLASS PERIOD AND PAY PERIODS WORKED DURING THE PAGA PERIOD, YOUR ESTIMATED INDIVIDUAL SETTLEMENT PAYMENT IS [INSERT AMOUNT], TO BE ISSUED LESS APPLICABLE TAXES.

To the extent any Participating Class Member disputes any aspect of his or her payment, that Participating Class Member must complete a workweek dispute report form and produce supporting evidence to the Settlement Administrator and it must be postmarked no later than [Response Deadline]. Late workweek dispute forms will not be considered. Defendant's records will be presumed determinative.

Once the Settlement becomes final (as described in response to Question 17 below), the process of funding the Gross Settlement Amount (as described above) will begin. The Individual Settlement Payments to Participating Class Members will be made within fifteen (15) calendar days after Defendant fully funds the Settlement. Defendant shall fund the Gross Settlement Amount by no later than Thirty (30) days after the Final Approval Date. Additionally, any settlement checks that are not cashed within one hundred eighty (180) days after mailing shall thereafter be paid to the California State Controller in the name of the Class Member who did not cash his or her check.

7. What Am I Giving Up In Exchange For Settlement Benefits?

In exchange for the consideration provided, Plaintiff and each member of the Settlement Class who does not submit a valid Request for Exclusion (defined in response to Question 10 below) will release Triton Air, Inc., and each of its parent companies, subsidiaries, related companies, affiliates, dbas, current and former management companies, shareholders, members, agents (including any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns, or any related entity that was the "employer" of Class Members (collectively, the "Released Parties") from any and all claims during the Class Period which were or could have been raised based on the facts, conduct, and/or omissions alleged in the Action, including all wage and hour claims, demands, rights, liabilities, and causes of action for unpaid wages, including minimum wage payments, regular wages, overtime wages; failure to pay wages during employment; failure to pay all wages due upon separation of employment; failure to maintain and provide accurate records; meal and rest break violations; meal and rest break premiums; wage statement violations, failure to reimburse for necessary business expenditures, violation of the Private Attorney General Act (California Labor Code section 2698, et seq.), civil and statutory penalties, interest, liquidated

damages, attorney's fees and costs, claims under California Labor Code sections 90.5, 201-204, 225.5, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1198, 2802, 2698-2699.5, and applicable Industrial Welfare Commission Wage Order, and claims under California Business & Professions Code sections 17200-17204. It is understood and agreed that Released Claims do not include claims for workers' compensation, unemployment, or disability benefits of any nature, nor any claims, actions, or causes of action which may be possessed by Settlement Class Members under state or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act, California Government Code section 12940, *et seq.*; the Unruh Civil Rights Act, California Civil Code section 51, *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.*; and all of their implementing regulations and interpretive guidelines.

HOW TO GET A SETTLEMENT PAYMENT

8. How Do I Get A Settlement Payment?

If you do not exclude yourself from the Settlement, you will automatically receive a class settlement payment in exchange for which, whether or not you cash or deposit the payment, you will be bound by all terms of the Settlement and any Final Judgment entered in this Action if the Settlement receives final approval by the Court; and you will give up your rights to be part of any other lawsuit against the Released Parties involving the same or similar legal claims as the ones in this case, based on the facts alleged in the Action. You will be mailed a settlement check at the address where this notice was mailed (unless you timely provide a forwarding address to the Settlement Administrator). If you worked during the PAGA Period, you will also receive a PAGA Payment and will be bound by the release of PAGA claims.

9. When Will I Get My Check?

Checks will be mailed to Participating Class Members after the Gross Settlement Amount is fully funded (as described in response to Question 6 above). If the judge approves the Settlement after a hearing on **[insert date]** (see "The Court's Final Approval Hearing" section below), there may be appeals. If there are any appeals, resolving them could take some time, so please be patient. Please also be advised that you will have only 180 days from the date that your settlement check is issued to cash it. If you do not cash your settlement check within 180 days of the date of its issuance, your Individual Settlement Payment will be voided. **Assuming there are no appeals, it is estimated that you will receive your settlement check within approximately forty-five (45) days after the Court grants final approval of the Settlement** (see "The Court's Final Approval Hearing" section below).

EXCLUDING YOURSELF FROM THE SETTLEMENT

10. How Do I Ask The Court to Exclude Me From the Settlement Class?

If you do not wish to participate in the Settlement (“opt out”), you must complete and send a timely Request for Exclusion form. The Request for Exclusion must be signed, dated, and mailed by First Class U.S. Mail, or the equivalent, postmarked no later than [Response Deadline] to:

**Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863**

Requests for Exclusion that do not include all required information and/or that are not timely submitted will be deemed null, void, and ineffective. Settlement Class Members who fail to submit a valid and timely Request for Exclusion on or before the above-specified deadline shall be bound by all terms of the Settlement and any Final Judgment entered in the Action if the Settlement is approved by the Court. Finally, this request for exclusion will not apply to your Individual PAGA Settlement Payment if you worked during the PAGA Period. You will receive your Individual PAGA Settlement Payment regardless of your request for exclusion and you will be bound by the PAGA release if the Settlement is approved.

11. If I Exclude Myself, Can I Get Anything From the Class Settlement?

No. If you exclude yourself now, you will not get anything from the settlement. If you ask to be excluded within the time allowed for a Request for Exclusion, you will not get an Individual Class Settlement Payment and you will not be bound by the Settlement. However, as stated in section 10, even if you submit a request for exclusion from the Class Action Settlement, it will not apply to your Individual PAGA Settlement Payment if you worked during the PAGA period and you will receive your Individual PAGA Settlement Payment regardless of your request for exclusion and you will be bound by the PAGA release if the Settlement is approved.

12. If I Don’t Exclude Myself, Can I Sue Later?

No, not for the Released Claims. Unless you exclude yourself, you give up the right to sue the Released Parties for the claims that were or could have been brought based on the facts as alleged in this Action. You must exclude yourself from the Class Action Settlement within the time indicated in the response to Question 10 above if you wish to start or continue your own lawsuit.

THE LAWYERS REPRESENTING YOU

13. Do I Have a Lawyer In This Case?

The Court has appointed the following lawyers to serve as Class Counsel for the Settlement Class:

Kevin Mahoney, Esq.
kmahoney@mahoney-law.net
John A. Young (SBN: 299808)
jyoung@mahoney-law.net
MAHONEY LAW GROUP, APC
249 East Ocean Boulevard, Suite 814
Long Beach, CA 90802
Telephone No.: (562) 590-5550
Facsimile No.: (562) 590-8400

14. How Will The Costs of the Lawsuit and The Settlement Be Paid?

Subject to court approval, Defendant agrees to pay, as part of the Gross Settlement Amount, Eighty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$86,666.66) in attorneys' fees, and up to Fourteen Thousand Dollars (\$14,000.00) in actual costs, to Class Counsel. The Court may award less than these amounts. If lesser amounts are awarded, the difference will be returned to the Net Settlement Amount for distribution to Participating Class Members. All attorneys' fees and costs will be paid from the Class Settlement Amount.

In addition, and subject to Court approval, Defendant agrees to pay Plaintiff, as part of the Gross Settlement Amount, a total of up to Five Thousand Dollars (\$5,000.00), as Class Representative Service Award for his participation in this lawsuit and for taking on the risk of litigation. Defendant also agrees to pay, as part of the Gross Settlement Amount, the LWDA PAGA Allocation of Twenty Thousand Dollars (\$20,000.00). Defendant also agrees to pay, as part of the Gross Settlement Amount, the Settlement Administrator's costs and fees associated with administering the Settlement, not to exceed Six Thousand Dollars (\$6,000.00). The Court may award less than these amounts. If lesser amounts are awarded, the difference will be included in the Net Settlement Amount for distribution to Participating Class Members.

OBJECTING TO THE SETTLEMENT

15. How Do I Object to the Settlement?

Any Settlement Class Member may object to the proposed Settlement for any reason by completing a written objection. The written objection must be mailed to the Settlement Administrator at the following address by regular U.S. Mail, or the equivalent, postmarked no later than [Response Deadline]:

Phoenix Settlement
Administrators
P.O. Box 7208
Orange, CA 92863

A written objection must be signed by the Settlement Class Member and must state: (1) the full name of the Settlement Class Member; (2) the dates of employment of the Settlement Class Member; (3) the last four digits of the Settlement Class Member's Social Security number and/or the entire Employee ID number; (4) the basis for the objection; and, (5) whether the Settlement Class Member intends to appear at the Final Approval Hearing. If a Settlement Class Member wishes to appear at the Court's Final Approval Hearing (see response to Question 17 below) and orally present his or his objection to the Court, they may do so whether or not they submitted a written objection to the Settlement Administrator. They may also hire counsel to represent them at the final approval hearing. Any Settlement Class Member who submits an objection or appears at the Final Approval Hearing to submit a verbal objection remains eligible to receive monetary compensation from the Settlement. Settlement Class Members who submit Requests for Exclusion may not object to the proposed Settlement.

16. What's The Difference Between Objecting and Asking to be Excluded?

Objecting is simply telling the Court you do not like something about the Settlement. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the Settlement. Whether you have filed an objection on time or not, you may attend and you may ask to speak, but you don't have to.

It is not necessary for you to appear at this hearing. You may appear and speak at the hearing if you want to do so, remotely or in-person. You can arrange for a remote appearance via Zoom through the Court's online check-in process available through the court's website at <https://www.occourts.org/mediarelations/civil.html>. Any attorney who will represent you must file a notice of appearance with the Court and serve the notice of appearance on Class Counsel and counsel for Defendant on or before [one week before the hearing]. You will be solely responsible for the fees and costs of your own attorney.

17. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Final Approval Hearing on **[insert time/date]** in Department CX-101 at the Superior Court of California for the County of Orange, located at **751 W. Santa Ana Blvd, Santa Ana, CA 92701**. The hearing may be moved to a different date and/or time without additional notice. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will only listen to people who ask to speak at the hearing. The Court will also decide how much should be paid for Class Counsel's fees and costs, the Settlement Administrator's costs, the PAGA Allocation, and Plaintiff's Class Representative Service Award. After the hearing, the Court will decide whether to approve the Settlement. If the Court grants final approval of the Settlement, the date which the Court grants final approval of the Settlement will be the Final Approval Date. We do not know how long these decisions will take.

18. Do I Have to Come to the Hearing?

No. Class Counsel will answer any questions the judge may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it, however, you are welcome to do so. As long as you mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend and represent you, but it is not required.

19. May I Speak At The Hearing?

If a Settlement Class Member wishes to appear at the Final Approval Hearing and orally present his or his objection to the Court, they may do so regardless of whether or not they submitted a written objection.

IF YOU DO NOTHING

20. What Happens If I Do Nothing At All?

If you do nothing, you will automatically receive a payment from this Settlement (assuming the Settlement is approved and not successfully appealed) as described above and you will be bound by the release of the claims described above and in the Settlement. If the Court grants final approval to the Settlement, notice of the final approval shall be posted on the Settlement Administrator's website at www.phoenixclassaction.com.

GETTING MORE INFORMATION

21. How Do I Get More Information?

This notice summarizes the Settlement. More details are in the Settlement. You may contact Class Counsel or the Settlement Administrator for more information. This notice summarizes the Settlement. More details are in the Settlement. You may contact Class Counsel by email at jyoung@mahoney-law.net or by phone at (562) 590-5550, or visit the Settlement Administrator website at [www.phoenixclassaction.com/\[INSERT BY ADMINISTRATOR\]](http://www.phoenixclassaction.com/[INSERT BY ADMINISTRATOR]) for more information. You may also view the entire case file, you can go to the Clerk's Office of the Superior Court of California for the County of Orange, located at 751 W. Santa Ana Blvd, Santa Ana, CA 92701 or review the Court's docket for this case by using the URL for the Court: <https://ocapps.occourts.org/civilwebShoppingNS/Search.do>.

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

ETHAN ROGERS, as an individual and on
behalf of all similarly situated employees,

Plaintiff,

v.

TRITON AIR, INC., and DOES 1-50,
inclusive,

Defendants.

CONSOLIDATED CASE NO.:
30-2022-01284893-CU-OE-CXC

**REQUEST TO BE EXCLUDED FROM
SETTLEMENT¹**

Assigned for all purposes:
Hon. Peter Wilson
Department CX-101

**ONLY COMPLETE THIS FORM IF YOU *DO NOT* WANT TO RECEIVE RECOVERY
FROM THE SETTLEMENT**

Name: _____

Address: _____

Telephone: _____

Last 4 Digits of SSN: _____

I wish to be excluded from the Settlement of the case *Rogers v. Triton Air, Inc.* Case No. 30-2022-01284893-CU-OE-CXC, currently pending in the Superior Court of the State of California, County of Orange. I understand by signing below I will not receive any payment from this Settlement and will not be releasing any claims at issue in this action.

Dated: _____

(signature)

If you wish to be excluded from the Settlement, please complete and sign this Request for Exclusion form and mail it to *Rogers v. Triton Air, Inc.*, c/o Phoenix Class Action Administration at P.O. Box 7208, Orange, CA 92863 no later than [DATE set by Court].

¹ DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE A SETTLEMENT PAYMENT.

EXHIBIT C

SUPERIOR COURT OF THE STATE OF CALIFORNIA – ORANGE
ROGERS V. TRITON AIR, INC.

XX - XX - _____

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Check a box below ONLY if you wish to dispute the dates listed above:

☐ I wish to dispute the number of Workweeks listed above. I believe the correct amount of my work weeks is _____. I have also included information and/or documentary evidence that support my dispute (such as paystubs, time records, tax documents). I understand that, by submitting this dispute, I hereby authorize the Settlement Administrator to review Defendant's records and make a determination as to the validity of my dispute based upon Defendant's records as well as the records and information that I submit to the Settlement Administrator.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the information I provided in this Workweek Dispute Form is true and correct.

Dated: _____

Signature: _____

Print or Type Name: _____

MAIL TO:

ROGERS V. TRITON AIR, INC.
Settlement Administrator
c/o
Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863

IF YOU ARE CONTESTING THE AMOUNT OF YOUR ELIGIBLE WORKWEEKS, TO CHALLENGE YOUR WORK WEEK AMOUNT YOU MUST SIGN AND POSTMARK AND RETURN THIS FORM TO THE SETTLEMENT ADMINISTRATOR ON OR BEFORE «NOTICE PERIOD DEADLINE».

EXHIBIT D

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

ETHAN ROGERS, as an individual and on
behalf of all similarly situated employees,

Plaintiff,

v.

TRITON AIR, INC., and DOES 1-50,
inclusive,

Defendants.

CONSOLIDATED CASE NO.:
30-2022-01284893-CU-OE-CXC

OBJECTION TO SETTLEMENT

Assigned for all purposes:
Hon. Peter Wilson
Department CX-101

**ONLY COMPLETE THIS FORM IF YOU WISH TO OBJECT TO THE PROPOSED
SETTLEMENT. THIS IS NOT AN "OPT-OUT" FORM.**

If you choose, you may object to the proposed Settlement. The Court may or may not agree with your objection. Objecting to the Settlement will not exclude you from the Settlement, and if the Court grants final approval of the Settlement, you will get your Settlement Payments as described in the Notice of Class Action Settlement, and the release of claims will apply to you.

If you wish to object to the Settlement, please complete and sign this form, and mail or deliver it to *Rogers v. Triton Air, Inc.*, c/o Phoenix Class Action Settlement Administration at **P.O. Box 7208, Orange, CA 92863**, no later than **[DATE set by Court]**.

Name: _____

Address: _____

Telephone: _____

Last 4 Digits of SSN: _____

I OBJECT TO THE PROPOSED STIPULATION REACHED IN ROGERS V. TRITON AIR, INC., SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE, CASE NO. 30-2022-01284893-CU-OE-CXC. THE BASIS FOR MY OBJECTION IS AS FOLLOWS:

_____.

Number of additional pages attached: _____

Dated: _____

(signature)